PB80-223662

Revision to State Implementation Plans -Procedures for Approval/Disapproval Actions

(U.S.) Environmental Protection Agency
Research Triangle Park, NC

Sep 76

U.S. Department of Commerce
National Technical Information Service
NTIS.

BIBLIOGRAPHIC INFORMATION

PB80-223662

Revision to State Implementation Plans - Procedures for Approval/Disapproval Actions.

Sep 76

PERFORMER: Environmental Protection Agency, Research Triangle Park, NC. Office of Air Quality Planning and Standards.
OAQPS-1.2-005A

EPA offices are delegated maximum responsibility allowed under the law to process rulemaking actions. Consequently, EPA headquarters review responsibilities will be reduced to be consistent with the increase in the Regional Office's responsibility in processing SIP rulemaking actions. However, despite increased Regional Office responsibility, EPA headquarters will retain the concurrence role in 'special action' cases. This document supersedes Interim Guideline OAQPS 1.2-005A (Revised) to implement this policy.

KEYWORDS: *Air pollution abatement, *Guidelines, *Implementation Air Pollution Planning program, *State implementatin plans.

Available from the National Technical Information Service, Springfield, Va. 22161

PRICE CODE: PC A03/MF A01

PB80-223662

GUIDELINE SERIES

OAQPS NO. 1.2-005A (Revised 9/76)

REVISIONS TO STATE IMPLEMENTATION PLANS - PROCEDURES FOR APPROVAL/ DISAPPROVAL ACTIONS

Original Issued 10/75, Pages 1, 11, 11-14, 17, 18, 23-30, Revised 9/76

U.S. ENVIRONMENTAL PROTECTION AGENCY

Office of Air Quality Planning and Standards

Research Triangle Park, North Carolina

REPRODUCED BY
NATIONAL TECHNICAL
INFORMATION SERVICE
U.S. DEPARTMENT OF COMMERCE
SPRINGFIELD, VA 22161

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: Revisions to OAQPS Guideline No. 1.2-005A (Revised); Entitled "Revisions to SIPs- Procedures for Approval/Disapproval Actions"

DATE: 12 OCT 1976

FROM: B. J. Steigerwald, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Addressees

Recent guidance has mandated significant revisions to the subject guideline. On July 16, 1976, Roger Strelow circulated a memo to the Air and Hazardous Materials Division Directors, Regions I, III-X, and to the Environmental Programs Division Director, Region II on the subject of "Documentation of SIP Revisions." Mr. Strelow made recommendations for the preparation of a "Rationale for Approval/Disapproval" to accompany each SIP revision when it is sent to headquarters for final action. On August 4, 1976, Stanley Legro circulated a memorandum to the RO Enforcement Division Directors on the subject of "Procedure for Submission of Final Compliance Date Extension Rulemaking Document to Federal Registers". This memorandum states that 40 CFR 55 - Energy Related Authority actions shall be classified Special Action at the final rulemaking stage.

OAQPS Guideline No. 1.2-005A (Revised) has been further revised to include these and several other minor provisions. These changes to the Guideline are enclosed. The enclosure contains revised pages of the guideline which should be inserted as replacements for existing pages. These revised pages have been dated [9/76] for easy identification. A summary of all changes with an explanation follows by page number:

1. Cover Page - Revisions are noted.

2. Table of Contents - Revised to reflect all revisions. The notation "[9/76]" appears beside the revised sections.

3. Page 11
   a. Section 3.1.3 has been revised to eliminate the discussion of the Rationale. Preparation of the Rationale has been highlighted in Section 3.2.
   b. Section 3.2 - Preparation and Circulation of the Rationale for Approval/Disapproval has been added to incorporate the ideas in Mr. Strelow's memorandum of July 16, 1976, in Documentation of SIP Revisions.

4. Pages 12, 23, 25, 27, 29, 30
   a. The number of copies of the Rationale included with the final rulemaking package as forwarded to the Administrator has been reduced from two to one.
   b. The required number of copies of the Regulatory Portion of the Federal Register package has been changed from the "original and eight copies" to the "original and four copies". This change was suggested by James Parker, Federal Register Officer, Office of Planning and Management, Management and Organization Division.

5. Page 13 - Existing Section 3.2 - Procedural Problems When State Submittal is Not Approved is now Section 3.3 in the revised version.

6. Page 14 - Section 4.1 - General has been inserted after Section 4.0 to allow for creation of Section 4.2.

7. Page 18 - Section 4.2 - Classification of SIP Actions Involving 40 CFR 55 - Energy Related Authority has been added to provide for the Special Action designation for final rulemaking involving 40 CFR 55.

8. Page 23 - The language in paragraphs one and two has been revised to make it clear that the Federal Register Officer should not be sent copies of the rationale with FEDERAL REGISTER actions signed by RAs. Of course, the headquarters review staff should be sent copies of the rationale.

9. Page 26
   a. The introduction for section 7 has been revised to discuss 40 CFR 55 - Energy Related Authority.
   b. Second line under section 7.1 after "Administrator and forwarded," the words "(without rationale)" have been added.

10. Page 28 - The second paragraph has been added to discuss processing 40 CFR 55 - Energy Related Authority actions.

11. Page 29 - The footnote has been revised to change the wording with regard to circulation of the rationale.

12. Page 30 - The footnote has been revised to change the wording with regard to circulation of the rationale, and to explain that the concurrence period for final 40 CFR 55 - Energy Related Authority is 5 days.

In addition, position titles have been substituted for personal names.

Revised copies of the entire guideline will be available from Joe Sableski or Ted Creekmore (629-5437).

Enclosure

Addressees: Directors, Div. of Enforcement, Regions I-X (5)
Directors, Air & Hazardous Materials Div., Regions I, III-X (10)
Director, Environmental Programs Div., Region II (10)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 20 1975

OFFICE OF
AIR AND WASTE MANAGEMENT

SUBJECT: Guidelines for Proposal and Approval of State Implementation Plan Revisions

TO: All Regional Administrators

On July 22, 1975, OAWM and OE circulated to the Regional Administrators and other interested persons a policy memorandum entitled "Summary of Revised Procedures for Proposal and Approval of State Implementation Plan Revisions." The policy and procedures summarized in this memorandum have been incorporated into the enclosed OAWM Guideline entitled Revisions to State Implementation Plans - Procedures for Approval/Disapproval Actions. These guidelines were circulated to the Regional Offices and other interested parties in draft form for review on August 21, 1975.

As described in the July 22, 1975, memorandum, the purpose of these procedures is to (1) provide the Regional Offices with additional responsibility and authority for development, review, and approval of SIP revisions, (2) eliminate the requirement for formal headquarters staff concurrence with most SIP approval/disapproval actions, and (3) expedite the headquarters staff review procedures for those SIP actions which must still receive headquarters staff concurrence.

These revised procedures were effective August 1, 1975, with one exception. An EPA order delegating authority from the Administrator to the Regional Administrator to sign EPA initiated SIP proposals did not become effective until September 15, 1975.

Any questions your staff may have should be directed to Jean J. Schueneman, Director, Control Programs Development Division (919-688-8251).

for Roger Strelow
Assistant Administrator
for Air and Waste Management (AW-443)

Enclosure

j.c

cc: Directors, Divisions of Enforcement, Regions I-X (10)
Directors, Divisions of Air and Hazardous Pollutants, Regions I, III-X (10)
Director, Environmental Programs Division, Region II (10)
R. Wilson
N. Shutler, MSED
J. Hidinger, OTLUP
W. Barber, DSR
J. Parker, MOD
M. James, OGC
P. Cashman, ORIO

jcd

TABLE OF CONTENTS

	Page	Date of Revisions
List of Abbreviations	iii	
1.0 INTRODUCTION	1	
1.1 Purpose	1	
1.2 Overview	3	
2.0 SPECIAL ISSUES	6	
2.1 Division of Authority	6	
2.2 Delegation of Authority to the Regional Administrator to Sign Proposed Rulemaking Packages	7	
2.3 Court Decisions	7	
2.3.1 Opportunity for Public Comment	8	
2.3.2 Requirements for Approval/Disapproval Action	8	
3.0 FEDERAL REGISTER PACKAGES	9	
3.1 Content	9	
3.1.1 State Submitted Revisions to SIPs	9	
3.1.2 SIP Revisions Originated by the Regional Office	10	
3.1.3 Preparation of FEDERAL REGISTER Actions	11a	[9/76]
3.2 Preparation and Circulation of the Rationale for Approval/Disapproval	11a	[9/76]
3.2.1 Preparation of the Rationale for Approval/Disapproval	11a	[9/76]
3.2.2 Circulation of the Rationale for Approval/Disapproval for Headquarters Review	11c	[9/76]
3.3 Procedural Problems - When State Submittal is Not Approvable	13	[9/76]
4.0 CLASSIFICATION OF SIP REVISION	14	[9/76]
4.1 General	14	[9/76]
4.2 Classification of SIP Actions Involving 40 CFR 55 - Energy Related Authority	18a	[9/76]
5.0 HEADQUARTERS REVIEW AND COORDINATION	18a	[9/76]
5.1 Office of the Administrator	18b	[9/76]
5.1.1 Office of General Counsel	18b	[9/76]
5.1.2 Office of Regional and Intergovernmental Operations	18b	[9/76]

5.2 Office of Air and Waste Management 19
5.2.1 Office of Air Quality Planning and Standards 19
5.2.2 Office of Transportation and Land Use Policy 19
5.3 Office of Enforcement 20
5.3.1 Office of General Enforcement 20
5.4 Office of Planning and Management 21
5.4.1 Office of Planning and Evaluation 21
5.4.2 Office of Administration 21
5.5 Assistance to Regional Offices by Headquarters Staff Offices 21

6.0 PROCESSING OF NORMAL SIP REVISIONS 22
6.1 Proposed Rulemaking 22
6.2 Handling Public Comments 24
6.3 Final Rulemaking . . . . . 24 [9/76]
6.4 Procedure for Headquarters to Change a Normal Action to a Special Action Issue . . . . . 25 [9/76]

7.0 PROCESSING OF SPECIAL ACTION SIP REVISIONS . . . . . 26a [9/76]
7.1 Proposed Rulemaking . . . . . 26a [9/76]
7.2 Public Advertisement . . . . . 26b [9/76]
7.3 Handling Public Comments . . . . . 27 [9/76]
7.4 Final Rulemaking Action . . . . . 27 [9/76]
7.5 Non-Concurrence . . . . . 28 [9/76]

FIGURE 1 Organization Chart for Headquarters Review and Coordination iv

FIGURE 2 FEDERAL REGISTER Components - Final Rulemaking . . 12 [9/76]

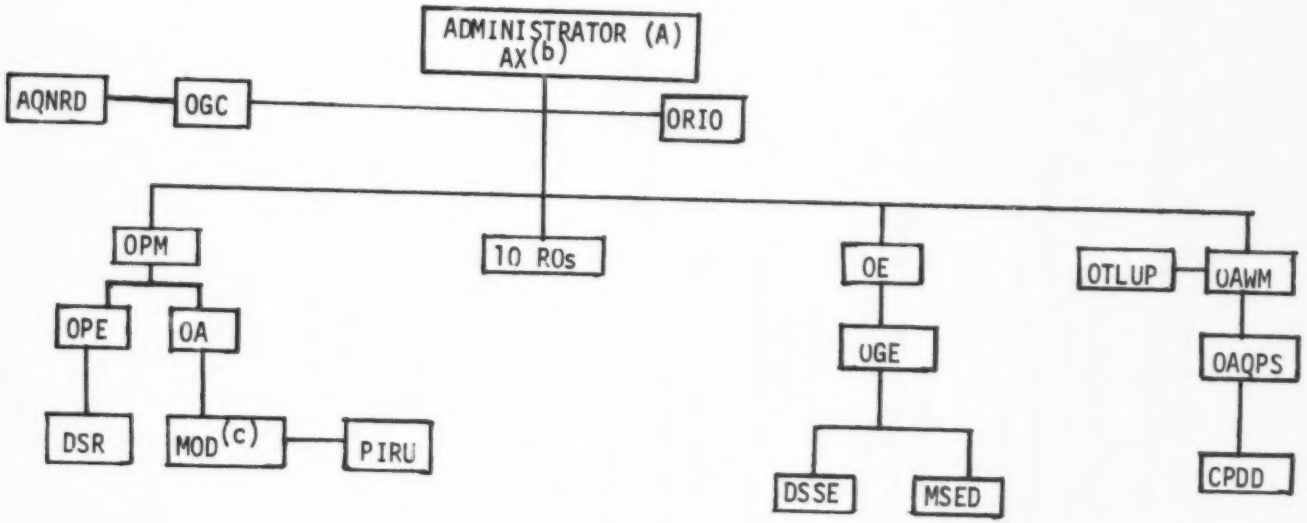
FIGURE 3 Procedures for Normal SIP Revisions . . . . . 29 [9/76]

FIGURE 4 Procedures for Special Action SIP Revisions . . . 30 [9/76]

LIST OF ABBREVIATIONS

A	Administrator
OGC	Office of General Counsel
AQNRD	Air Quality, Noise, and Radiation Division
ORIO	Office of Regional and Intergovernmental Operations
OAWM	Office of Air and Waste Management
OTLUP	Office of Transportation and Land Use Policy
OAQPS	Office of Air Quality Planning and Standards
CPDD	Control Programs Development Division
OE	Office of Enforcement
OGE	Office of General Enforcement
DSSE	Division of Stationary Source Enforcement
MSED	Mobile Source Enforcement Division
OPM	Office of Planning and Management
OPE	Office of Planning and Evaluation
DSR	Division of Standards and Regulations
OA	Office of Administration
MOD	Management and Organization Division
PIRU	Public Information Reference Unit
AA	Assistant Administrator
RO	Regional Office
RA	Regional Administrator
AQMP	Air Quality Maintenance Plan
TCP	Transportation Control Plan

Figure 1. ORGANIZATION CHART FOR HEADQUARTERS REVIEW AND COORDINATION[a]



a. This skeleton organization chart shows only those organization components frequently involved in the SIP review process.

b. Administrator's Correspondence Control

c. Contains FEDERAL REGISTER Officer.

REVISIONS TO STATE IMPLEMENTATION PLANS - PROCEDURES FOR APPROVAL/DISAPPROVAL ACTIONS

1.0 INTRODUCTION

1.1 Purpose

The Administrator has ordered that the Regional Offices be delegated maximum responsibility allowed under the law to process rulemaking actions. Consequently, EPA headquarters review responsibilities will be reduced to be consistent with the increase in the Regional Office's responsibility in processing SIP rulemaking actions. However, despite increased Regional Office responsibility, EPA headquarters will retain the concurrence role in "special action" cases.

This document supersedes Interim Guideline OAQPS 1.2-005A (Revised) entitled Revisions to State Implementation Plans - Procedures for Approval Disapproval Actions (April 1975) to implement this policy, which was announced in a July 22, 1975, OAWM/OE memorandum to the Regional Administrators. This Guideline also supersedes OE Guideline S-5 entitled Procedures for Review and Approval of Compliance Schedules Pursuant to § 51.6 to the extent that 1.2-005A and S-5 conflict.

Major changes in this Guideline which implement the new policy are as follows:

a. The promulgation of SIP revisions will be viewed as falling into two categories with regard to the nature and extent of appropriate headquarters review of Regional Office actions. These categories are called "normal" and "special action" SIP revisions. EPA headquarters staff elements will not review normal SIP revisions, but will be involved in policy review of special action SIP revisions. Even so, the review of special actions is revised from that required in the Interim Guidelines (April 1975) and will be streamlined to accomplish the aims previously described. Normal and special action SIP Revisions are discussed in detail in Section 4.

b. The current distinction between "State-initiated" and "EPA-initiated" SIP revisions will be eliminated. Pursuant to EPA Order 1265.1A, September 15, 1975, the Regional Administrator may sign proposed rulemaking packages which originate within EPA and are proposed as changes to an SIP.

c. The Office of Regional and Intergovernmental Operations (ORIO) will coordinate proposed and final rulemaking packages for special action SIP revisions.

1.2 Overview

These procedures shall apply to all SIP-related actions that involve a change or modification in the approval of State Implementation Plans (compliance schedules, control strategy, emergency episode, resources, etc.). The processing and evaluation of such actions will be handled in accordance with these guidelines.

The Regional Offices are responsible for direct interface with the State in matters involving the development and submittal of SIP revisions. They are responsible for seeing that all material germane to the SIP action or matter at hand has been received from the States and is circulated as needed for review, evaluation, recommendations and action. The ORIO in Washington will coordinate processing actions which require policy review from OE, OAWM, OPM, or OGC.

Procedures for revisions to SIPs may be further divided into (1) state-initiated, (2) Regional Office-initiated, and (3) headquarters-initiated. This guideline does not cover headquarters-initiated SIP revisions.

Thus, the procedures involved in processing SIP revisions are shown in Figures 3 and 4 and summarized as follows:

a. P.O. receives state submittal, performs general review, or develops its own revision and prepares proposed rulemaking package. This action is signed by the Regional Administrator and summarizes the content of the State submission or EPA proposal which EPA is considering as a revision to the SIP and invites public comment generally within 30 days as explained in Section 6. The memorandum transmitting a "normal" proposed rulemaking package shall state the Regional Administrator's determination that the rulemaking warrants normal action and explain why. Copies of this determination will be provided to appropriate staff offices; these offices may recommend that the appropriate Assistant Administrator consult with the Regional Administrator on the need for special action on the rulemaking.

b. <u>When Rulemaking is Classified as Normal Action</u>:

   (i) Regional Office forwards the proposal to the <u>Federal Register</u> through MOD with copies of the proposal and State submittal to PIRU, CPDD, DSR, and other appropriate headquarters offices (DSSE, OTLUP, MSED) as appropriate.

   (ii) Regional Office evaluates plan revision and public comments, and prepares final rulemaking package.

(iii) Regional Office forwards final rulemaking package (action memo, regulation portion, evaluation report of state submittal, or technical support for EPA initiated protions) thru MOD to AX for the Administrator's signature with copies to PIRU, CPDD, DSR, and to other appropriate offices.

(iv) No headquarters staff concurrence is necessary for proposal or final rulemaking.

c. When Rulemaking is Classified as Special Action:

(i) Regional Office forwards the proposal to ORIO and forwards copies of the proposal and State submittal to PIRU, CPDD, DSR, OGC, and other appropriate offices.

(ii) Headquarters staff elements have 14 days to non-concur. ORIO will assume concurrence if it receives no non-concurrence. ORIO will coordinate non-concurrences as described in Section 7.5 - Non-Concurrences (p-28).

(iii) Regional Office evaluates plan revisions and public comments and prepares final rulemaking package.

(iv) Regional Office forwards the final rulemaking package to ORIO with copies to PIRU, CPDD, DSR, OGC, and other appropriate offices.

(v) Headquarters has 14 days to non-concur. ORIO will coordinate non-concurrences as described in Section 7.5 Non-Concurrence (p-28).

d. For Regional Office originated revisions, the technical support rationale will be developed prior to the proposed rulemaking and will be included in the proposed rulemaking package. Subsequently, the procedures in "b" and "c" above apply.

2.0 SPECIAL ISSUES

2.1 Division of Authority

A division of authority regarding policy-making must be established to resolve non-concurrence during intra-agency review when the parties involved are unable to reach agreement. This division is necessary to provide an orderly procedure for presenting such issues to the Administrator and at the same time provide each organization the opportunity to be heard. The location of basic authority on SIP decisions is as follows:

Primary Responsibility for:	Office
Matters of national policy and precedent with respect to air program issues	OAWM
Matters of national policy and precedent with respect to enforcement issues	OE
Legal/procedural questions	OGC
Regulatory/non-regulatory questions, where policy and precedent has been established and local policy issues are predominant.	Regional Offices

In instances where differences cannot be resolved, the Regional Office will prepare the package with the non-concurrence memorandum tabbed and transmit the package to the Administrator through OPIO.

2.2 Delegation of Authority to the Regional Administrator to Sign Proposed Rulemaking Packages

On May 30, 1974 (39 FR 18805) the Administrator delegated authority to the Regional Administrator and Assistant Administrators to sign proposed rulemaking packages involving State-submitted SIPs. This authority was limited to proposed rulemaking packages in which the State proposal is presented for public comment (generally a 30 day period), and did not include authority to sign proposals which EPA initiates. An order has been issued which delegates authority to the Regional Administrators and Assistant Administrators to sign EPA-initiated proposed rulemaking for SIPs.

2.3 Court Decisions

A court decision requires that EPA provide for public comment prior to approval/disapproval actions on SIP actions submitted by States, and that an official action be taken in the Federal Register regarding all correctly submitted State submissions, even if the submission is unapprovable or contains major deficiences.

2.3.1 Opportunity for Public Comment - In response to the court decisions, EPA will provide an opportunity for public review and comment on submissions by States of changes and additions to the SIP. This opportunity for public review and comment shall be provided through publication of a notice of proposed rule-making in the FEDERAL REGISTER. SIP revisions originated by a Regional Office usually require a public hearing. For purposes of this guideline, comments received at a public hearing should be treated the same as other public comments, except that it is not necessary to forward a copy of the complete hearing record to the Public Information Reference Unit.

2.3.2 Requirements for Approval/Disapproval Actions - EPA has frequently been delinquent in taking actions on State SIP submittals which include unapprovable portions. As pointed out in NRDC v. EPA (5 ERC 1879, 1st Cir. 1973), EPA must act to make clear which portions of a submitted plan are approvable and which are not. Thus, for every State submittal which is transmitted in accordance with EPA's procedural requirements, EPA must act expeditiously to disapprove those portions of the submission which are deficient, or persuade the State to withdraw such portions.

3.0 FEDERAL REGISTER PACKAGES

3.1 Content

3.1.1 State Submitted Revisions to SIPs - These FEDERAL REGISTER actions have two stages. They consist of the proposed rulemaking stage, in which public comment is solicited on the proposed action, and the final rulemaking stage in which the action is promulgated. The proposed rulemaking package normally includes three components, the cover memorandum, notice of proposed rulemaking, and attachments. The proposed rulemaking section states that certain specific material has been received from a State as a proposed amendment to the SIP, summarizes the content of this proposal and explains that this proposal is available for public comment. The proposed rulemaking should not contain a statement as to whether EPA thinks it is approvable; without such a statement, it is easier for EPA to "go either way" during the final rulemaking without worrying about reproposal. The cover memorandum should indicate (a) whether the revision is State-initiated or EPA-initiated, (b) whether it is a proposal or the final package, and (c) the Regional Administrator's classification of the SIP revision, i.e., normal or special action, with an appropriate rationale for this classification. The attachments include a copy of the State submittal, summary of the State public hearings, and any other appropriate technical documentation.

The final rulemaking package may contain as many as four components. Figure 2 lists in sequence the possible components

of the final rulemaking package that must be prepared by the Regional Office. The action memo, preamble and regulatory section, and rationale for approval/disapproval are prepared by the Regional Office. The action memorandum should include (a) the date the proposal was published in the FEDERAL PEGISTER, (b) the normal versus special action determination and (c) the initiator (i.e., a State or EPA). Section 7 discusses the preparation of the final rulemaking package.

3.1.2 SIP Revisions Originated By the Regional Office - The proposed rulemaking for Regional Office originated SIP revisions includes the same components as the proposed rulemaking package for a State submitted revision, i.e., cover memorandum, proposed rulemaking section, and attachments. However, this action proposes regulations and/or procedures which EPA desires to promulgate, rather than summarizing a SIP revision proposed by the State for which EPA is soliciting comments, as in Section 3.1.1. Consequently, the proposed rulemaking includes definite procedures and/or regulations recommended by EPA. It also usually notifies the public of EPA's intention to hold public hearings on such proposal. The attachments will consist of EPA's technical support document for this action and other appropriate technical documentation. This proposed package may be signed by the Regional Administrator pursuant to EPA Order 1265.1A of September 15, 1975.

The final rulemaking package contains the same components as the package prepared for promulgation of State submitted SIP

revisions. The preamble includes a discussion of comments received at the public hearing held by EPA and comments received during the public comment period. Appropriate technical support information is included in the package.

3.1.3 Preparation of FEDERAL REGISTER Actions - A copy of the FEDERAL REGISTER Handbook on Document Drafting, January 1975, should be obtained by all personnel involved in the preparation of FEDERAL REGISTER notices. This may be obtained through the Office of the FEDERAL REGISTER, National Archives and Records Service, Washington, D.C. 20408 (FTS-523-5266). Two particularly helpful portions of the Handbook are page 14, where preparation of preambles for final rulemaking is discussed, and page 30, where preparation of proposed rulemaking packages is discussed.

3.2 Preparation and Circulation of the Rationale for Approval/Disapproval

3.2.1 Preparation of the Rationale for Approval/Disapproval - It should be emphasized that many approval/disapproval actions result in lawsuits. Also, headquarters staff needs certain information to permit a continued overview of SIP activities. Thus, it is necessary not only to explain EPA's actions fully in the FEDERAL REGISTER preamble, but also to prepare a detailed "Rationale for Approval/Disapproval" to explain the background and basis for the recommended action. This is particularly true when the SIP revision alters an emission limitation and consequently alters a control strategy. For this situation, the following type of information should be included in these rationale documents:

a. Background of the Revision

This should include a brief summary of the reasons for the revision, the extent of State/regional office interaction on the revision, any significant issues raised by the public, and any anticipated adverse reaction to the recommended action.

b. Adequacy of Control Strategy Demonstration

This should summarize the type of control strategy demonstration conducted, including the model used, if any. It should identify any inadequacies in the State submission, and explain how those inadequacies were resolved.

c. Technical Aspects of the Demonstration

This should include a summary of the significant input parameters to the model including air quality data, any assumptions used in the demonstration, and any unusual features of the demonstration (such as to account for complex terrain, stack height, emissions growth, etc.).

d. Projected Impact of the Revision

This should include the trends in air quality and emissions for the area, and any impact on the compliance status of affected sources, including the impact on potential growth (i.e., maintenance) in the area.

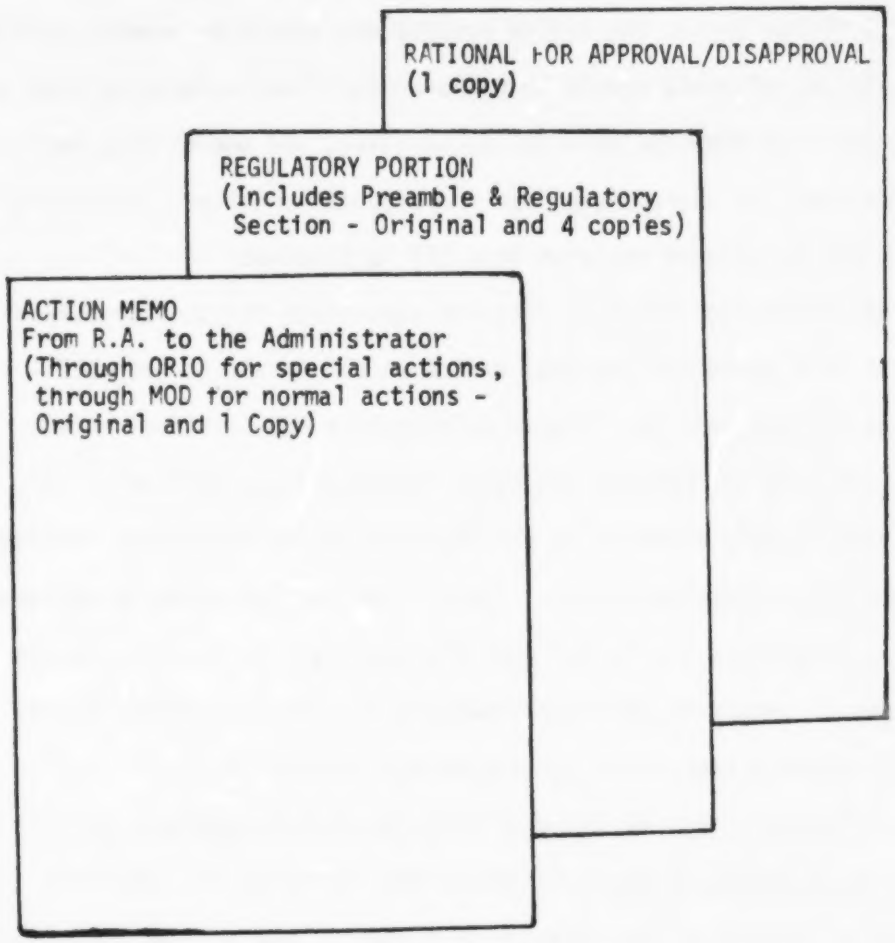
This information should normally not exceed ten pages in length, and can be provided as a separate document (generally appropriate for revisions initiated by the State) or as a summary in the Technical

Support Document (generally appropriate for revisions initiated by the regional office). This information should have been considered by the regional office during the review process and should be readily available. Generally, a rationale should be prepared for final rulemaking when a State-submitted revision to a SIP is involved, and one or more rationales prepared, as appropriate, for the proposal and final rulemaking when an EPA-originated revision to a SIP is involved.

The "Rationale" document does not substitute for the comprehensive internal file which the regional office should retain on each SIP revision. These internal files should include any pertinent notes, drafts, records of meetings and other conversations, memoranda, etc. which provide documentation of the decision making activities leading to the final rulemaking action. These files are not normally reviewed by the headquarters staff, but they are necessary to permit accurate responses to inquiries by other organizations and the public, and to provide adequate support in any subsequent litigation.

3.2.2 Circulation of the Rationale for Approval/Disapproval for Headquarters Review - Copies of the Rationale for Approval/Disapproval should be circulated with copies of the rulemaking actions (both proposed and final) to appropriate Headquarters staff and the Public Information Reference Unit for both normal and special action packages. However, when the FEDERAL REGISTER package has been signed by the Regional Administrator (proposed rulemaking), there is no need to include the rationale with the original and nine copies submitted to the FEDERAL REGISTER Officer.

Figure 2. FEDERAL REGISTER Package Components - Final Rulemaking[a,b]



a. For normal actions, MOD (Federal Register Officer) receives the package as shown above including the listed number of copies for processing through to the Administrator. In addition, each reviewing office receives one copy of the Action Memorandum, Regulatory Portion and Rationale.

b. For special actions, ORIO receives the package as shown and described above in footnote a.

3.3 Procedural Problems - When State Submittal is Not Approvable

If the State submittal contains major deficiencies, the Regional Office will attempt to negotiate with the State to correct these deficiencies. Major deficiencies include procedural deficiencies in the submission of the revision (e.g., improper public hearing was held) or situations where the adoption of the revision by the State will result in a deficiency in the SIP (e.g., air quality standards will be violated).

In such cases, the Regional Offices shall notify the State by letter of such deficiencies as expeditiously as possible after receipt of plans. This notification shall explain why the submission is unapprovable and what, if any, corrective action may be necessary. It may be appropriate to recommend that the State withdraw all or part of a submission. If the negotiations are successful and the major deficiencies are corrected, the Regional Office shall proceed with the rulemaking action. If the negotiations are unsuccessful (the State will not revise or withdraw the submission), the deficiencies must be disapproved under Part 52 in the final rulemaking package, and corrective regulations proposed if necessary. Normally if a State submission is disapproved, the present plan remains in effect. However, if the revision has been submitted to correct SIP inadequacies and is disapproved, corrective regulations will be necessary.

4.0 CLASSIFICATION OF SIP REVISION

4.1 General

As discussed previously, all SIP revisions will fall into one of two categories with regard to the nature and extent of appropriate headquarters review of Regional Office actions. These categories will be called "normal" and "special action" SIP revisions. For normal SIP revisions, headquarters may comment but will have no concurrence role. For special action SIP revisions, headquarters will have concurrence/non-concurrence responsibility at the proposal and final rulemaking stage.

It is anticipated that the majority of SIP revisions will be treated as normal. The special action category shall be reserved for revisions which would have national policy or multi-regional implications. National policy implications are inherent in revisions which address unresolved policy issues, which might compromise on-going litigation, or which raise new conceptual issues. For example, at the present time, national policy implications are inherent in any revision addressing issues such as increased stack height, intermittent controls, fugitive dust controls, oil to coal conversions, and approval of State plans to prevent significant deterioration. Eventually, however, these issues will be resolved. After resolution through promulgation of regulations in 40 CFR Part 51, or through other appropriate mechanisms, and after sufficient experience with interpretation/ implementation of the promulgated regulations, the great majority

of revisions dealing with these subjects will be considered as normal. After that time, special actions would be required only if the revision involved a departure from the generally agreed upon policy.

The magnitude of a SIP revision, and the environmental, social, or economic impact of that revision, are generally not relevant in determining whether a revision needs special action, although special attention should be given by the Regional Office to revisions which do have major environmental, social, or economic impacts to insure that national policy issues are not involved. To automatically require headquarters concurrence on major SIP revisions solely due to their magnitude (such as Air Quality Maintenance Plans and revisions to SIPs which are "substantially inadequate" for attainment) would result in duplication of Regional Office efforts, and an appropriate Headquarters review could not be accomplished in the 14 day time period permitted by the new procedures. For example, AQMPs and TCPs may contain major environmental, social, and economic impact. However, regulations and guidance for development and implementation of these plans will be circulated to the Regional Offices from headquarters. Comments and suggestions of the Regional Offices will have been considered and appropriate revisions made to these regulations and guidelines. Thus, comprehensive policy guidance for review and promulgation of AQMPs and TCPs as revisions to SIPs will be available, and these revisions will therefore usually be classified as normal after adequate experience has been gained with implementation of the regulations and guidelines.

The impact on other EPA Regions will not be considered to be relevant in determining whether a revision needs headquarters review so long as all potential inter-regional conflicts can be resolved by the Regional Offices concerned. The initiating Regional Office will be expected to coordinate with other appropriate Regions where national policy issues do not exist (as, for example, where inter-regional boundary problems exist, or where several Regions are developing individual regulations for similar sources under a generally understood national policy). However, the initiating Regional Office must explain the resolution of inter-regional issues in the Action Memorandum. The threat of litigation would not automatically require special action, although in some cases legal issues could have national policy implications. The Regional Counsel is expected to assess whether the threat of litigation is such that special action on the SIP revision is required, and is expected to consult with the OGC staff when doubt exists.

Thus, criteria for classification of normal and special action SIP revisions may be summarized as follows:

a. Normal action - Issues which do not have national or multi-regional implications, and for which policy has been established. For these purposes, policy has been established when the Regional Offices have received guidance from headquarters in the form of regulations and guidelines upon which (1) the R.O.s and other

appropriate offices have been extended an opportunity to review such material, (2) the material has been revised to reflect comments received from the review, and (3) these regulations and guidelines have been approved by appropriate EPA offices as representing agency policy. Some examples of normal issues are:

(i) Non-regulatory change to a SIP

(ii) Change in emission standards for new sources to meet NSPS or NESHAPS

(iii) Revision to State-specified sampling or stack testing methods.

(iv) Change in control strategy of SIP to replace the example region approach.

(v) Legal authority to implement EPA regulations (e.g., ISR, NSD).

b. Special action - Issues which have national or multi-regional implications and for which policy has <u>not</u> been established.

Regional Offices may exercise discretion in classifying a SIP revision for special action to get headquarters policy review, even though a certain revision might usually be classified as normal. Some examples of special action issues at this time (August 1975) are:

(i) Revisions involving stack height

(ii) Revisions involving intermittent controls

(iii) Approval of State plans to prevent significant deterioration

(iv) Control of fugitive dust

(v) Air Quality Maintenance Plans which contain controversial land use provisions

(vi) Transportation Control Plans which contain controversial provisions which have a major impact.

4.2 Classification of SIP Actions Involving 40 CFR 55 - Energy Related Authority

Energy related SIP actions are processed through cooperation with the Federal Energy Administration (FEA). Since these actions are new and involve consultation with FEA, all such actions will be classified "special action" for the final rulemaking package. The proposed package will be processed as a normal action.

5.0 HEADQUARTERS REVIEW AND COORDINATION

Several groups within EPA review and/or coordinate SIP actions. Figure 1 (page iv) presents a skeleton organization chart of these groups. The function of each group in this regard is summarized below.

5.1 Office of the Administrator

5.1.1 Office of General Counsel (OGC) - The Air Quality, Noise, and Radiation Division (AQNRD) of OGC provides legal advice and assistance on all Clean Air Act matters. The R.O. shall send AQNRD copies of proposed and final rulemaking packages which are processed as special action issues. AQNRD will recommend appropriate non-concurrence actions to OGC when warranted.

Revised 9/76

5.1.2 Office of Regional and Intergovernmental Operations (ORIO) - ORIO is a staff office of the Administrator which will coordinate the processing of proposed and final rulemaking packages for special action issues. The R.O.s shall send ORIO appropriate copies of the proposed and final rulemaking packages for all special action issues. ORIO's role is to coordinate the review process, and does not include review responsibility.

5.2 Office of Air and Waste Management (OAWM)

5.2.1 Office of Air Quality Planning and Standards (OAQPS) - Research Triangle Park, North Carolina - The Control Programs Development Division (CPDD) of OAQPS maintains an up-to-date SIP file. CPDD and other elements of OAQPS provides technical support and assistance to the Regional Offices on the development, evaluation, and promulgation of state implementation plans, including revisions thereto for the attainment and maintenance of air quality, and for the prevention of significant deterioration. The R.O.s shall send CPDD copies of all proposed and final packages involving SIPs. For special action issues CPDD will recommend appropriate non-concurrence action to OAWM when warrented.

5.2.2 Office of Transportation and Land Use Policy (OTLUP) - Washington, D.C. - OTLUP is a staff office of OAWM which provides technical support and assistance to the Regional Offices in the development, evaluation, and promulgation of transportation and land use related SIP actions. The R.O.s shall send OTLUP copies of proposed and final rulemaking packages involving SIP revisions which include transportation and land use elements. For special action rulemaking involving these issues OTLUP will recommend appropriate non-concurrence action to OAWM when warranted.

5.3 Office of Enforcement (OE)

5.3.1 Office of General Enforcement (OGE) - Washington, D.C. -

a. The Division of Stationary Source Enforcement (DSSE) of OGE provides technical support and assistance to the Regional Offices for the development, evaluation and promulgation of compliance schedules which are consistent with the previously approved control strategy. DSSE also provides support on the enforcement aspects of SIP revisions involving regulations for the control of stationary sources. The R.O.s shall send DSSE copies of all compliance schedule approval/disapproval actions. DSSE shall also receive copies of proposed and final rulemaking packages which include regulations for the control of stationary sources. For special action issues, DSSE will recommend appropriate non-concurrence action to OE when warrented.

b. The Mobile Source Enforcement Division (MSED) of OGE provides technical support with regard to enforcement of regulations to control emissions from mobile sources. The R.O.s shall send MSED copies of proposed and final rulemaking packages involving transportation control plans and other regulations affecting mobile sources. For special action issues, MSED will recommend appropriate non-concurrence action to OE when warranted.

5.4 Office of Planning and Management (OPM)

5.4.1 Office of Planning and Evaluation (OPE) - Washington, D.C. - The Division of Standards and Regulations (DSR) of OPE conducts evaluations of proposed regulations pursuant to its responsibility for procedural management and substantive evaluation of the developmental process for agency standards, regulations and guidelines. The R.O.s shall send DSR copies of all proposed and final rulemaking packages. For special action issues, DSR will recommend appropriate non-concurrence action to OPM when warranted.

5.4.2 Office of Administration (OA) - Washington, D.C. - The Management and Organization Division (MOD) of OA contains two components which coordinate SIP actions as follows:

a. The Public Information Reference Unit (PIRU) is located in the Library Systems Branch of MOD, and serves as a focal point where a record of EPA actions is available to the public. Copies of all proposed and final rulemaking actions, along with related attachments shall be forwarded to PIRU.

b. The FEDERAL REGISTER Officer is located in the Administrative Management Branch of MOD and serves as a liaison between EPA and the Office of the FEDERAL REGISTER. "Normal" proposed rulemaking actions are mailed directly to the FEDERAL REGISTER Officer from the R.A. All other rulemaking actions are routed through MOD as shown in Figures 3 and 4 (pgs. 29-30).

5.5 Assistance to Regional Offices by Headquarters Staff Offices

Upon request of a Regional Office, EPA staff offices will continue to provide advance comments on any draft SIP revision

prior to signature by the Regional Administrator. Also, appropriate staff offices will periodically review and give comments to the Regional Offices on the quality of the FEDERAL REGISTER packages they have been preparing and make suggestions for future improvements. Where national policy issues do not exist but several regions are developing individual regulations for similar sources, appropriate headquarters offices (CPDD, OTLUP, DSSE, etc.) will monitor development of these regulations and inform the Regional Offices which other Regions are working on similar regulations. Such regulations might relate to, for example, AQMPs, TCPs, or attainment related plans. Any additional assistance requested will be provided commensurate with availability of resources. Such solicitation of comments will not, however, abrogate the authority and responsibility of the Regional Administrator, nor will receipt of comments from headquarters staff offices require the R.A. to act in accordance with the comments or relieve the Regional Administrator from the requirement to obtain concurrence at the Assistant Administrator level on special action SIP revisions.

6.0 PROCESSING OF NORMAL SIP REVISIONS

6.1 Proposed Rulemaking

SIP revisions classified as normal will be processed as depicted in Figure 3. If substantive or procedural problems occur with a State-submitted SIP revision (submittal contains major deficiencies), the R.O. will negotiate with the State as discussed in Section 3.2. The proposed rulemaking package shall be signed by the Regional Administrator.

The proposal should adequately describe the content of the proposed revision, and identify major issues so that interested

parties can determine the scope and impact of the proposal; then, if further detail is desired, the plan can be reviewed at the identified locations (see page 9). It is important to prepare the proposal as soon as possible after receipt of the State submission to facilitate timely action. For actions signed by the RAs and submitted directly to the FEDERAL REGISTER Offices for publication in the FEDERAL REGISTER, there is no need for the package to contain the rationale for approval/disapproval.

The Regional Office shall mail the proposed rulemaking package (without rationale) to the FEDERAL REGISTER through the Office of Planning and Management, Management and Organization Division (OPM-MOD), Attention: FEDERAL REGISTER Officer, EPA (PM-213), 401 M Street, S.W., Washington, D.C. 20460. The package shall include the original proposal (double spaced with pages numbered at the bottom) and four copies. Two of the copies shall contain the statement "Certified to be a true copy of the original" typed at the bottom of the signature page. Additional copies of the proposed rulemaking package (including rationale as appropriate), the entire State submission, and summaries of the State public hearings shall be forwarded to:

a. Director, Control Programs Development Division, OAQPS (MD-15), Research Triangle Park, N.C. 27711, for review and inclusion in the official SIP files.

b. Director, Division of Standards and Regulations, OPE (PM-223), 401 M St., S.W., Washington, D.C. 20460.

c. Public Information Reference Unit, Library Systems Branch, EPA (PM-213), 401 M Street, S.W., Washington, D.C. 20460 for public availability at headquarters (telephone 755-2809).

d. Cognizant State and local air pollution control agencies (State and local agencies should get copies of the preamble

[continued on page 24]

and regulatory sections, but not the action memo. It is not necessary for them to be sent a copy of the State submission.)

3. Other appropriate EPA offices (See Section 5).

Once the proposed rulemaking package has been received by OPM (FEDERAL REGISTER Officer), it will be forwarded directly to the FEDERAL REGISTER without further review or delay. It is expected that these actions will appear in the FEDERAL REGISTER in 5 to 10 working days after receipt by OPM. If you have any questions on the status of a particular package, please call 755-0830.

6.2 Handling Public Comments

Receipt of any comments shall be promptly acknowledged. A copy of all comments will be forwarded to the Public Information Reference Unit (specify date and page of FEDERAL REGISTER referred to; e.g., XX FR XXXXX, X/X/XX) at the previously mentioned address. The Regional Office will take substantive comments into proper consideration as to how they impact on approval/disapproval and proposal actions. In preparing the final rulemaking FEDERAL REGISTER package, these public comments must be discussed in the preamble to the final regulations to be published in the FEDERAL REGISTER package, along with EPA's response to such comments. If no comments were received, it must be so noted.

6.3 Final Rulemaking

Final rulemaking for normal SIP actions will be processed as shown in Figure 3. Final rulemaking action must be prepared for the Administrator's signature. There will be no concurrence prior to submission of the FEDERAL REGISTER package to the Administrator although headquarters may comment on the SIP action during the

30 day public comment period. Thus, as discussed in Section 6.2 the Regional Office will consider substantive comments on the proposed rulemaking action and discuss these in the action memorandum and preamble of the final rulemaking action along with EPA's response to such comments. As discussed in Section 3.1, the final FEDERAL REGISTER package shall include the action memo, regulatory portion, and rationale for approval/disapproval.

The Regional Administrator shall forward the final rulemaking package through MOD to the Administrator for signature with copies to PIRU, CPDD, DSR and other appropriate headquarters offices as discussed in Section 5.0. As shown in Figure 2 (Section 3) the package forwarded to MOD shall consist of the cover memo, the action memorandum (original and 1 copy), the preamble and regulatory portion (original and 4 copies) and attachments (1 copy).

6.4 Procedure for Headquarters to Change a Normal Action to a Special Action Issue

If a staff office feels that a proposed rulemaking action classified as normal by a Regional Office should be a special action rulemaking, this office may recommend that the appropriate Assistant Administrator consult with the Regional Administrator on the need for special action on the rulemaking. A memorandum from the Assistant Administrator should be forwarded to the Regional

Administrator (cc ORIC) prior to the end of the 30 day comment period on the proposed rulemaking. The Regional Administrator and involved AAs shall reach agreement as to whether the rulemaking action will be treated as a normal or special action SIP revision at the final rulemaking stage, and it shall be processed accordingly.

7.0 PROCESSING OF SPECIAL ACTION SIP REVISIONS

Rulemaking for SIP revisions classified as special action will be processed as depicted in Figure 4. If substantive or procedural problems occur with State-submitted SIP revisions, the R.O. will negotiate with the State as discussed in Section 3.3.

Energy related actions under 40 CFR 55 are classified and processed differently from other SIP actions. These energy related actions are classified as normal for proposed rulemaking and special action for final rulemaking. The concurrence period for 40 CFR 55 action has been set at 5 days versus the usual 14 days (see Sections 4.2 and 7.4).

7.1 Proposed Rulemaking Action

The proposed rulemaking will be signed by the Regional Administrator and forwarded (without rationale) to the Office of Regional and Intergovernmental Operations (ORIO) (attention: Director (A-101) EPA, 401 M Street, S.W., Washington, D.C. 20460). Copies of this transmittal, with appropriate rationale, the State submission, and the summary of the State hearing if applicable, will be simultaneously forwarded to the appropriate headquarters staff offices for review. ORIO will hold the proposed rulemaking package for 14 calendar

days from receipt. During this time, ORIO will notify the appropriate staff offices of the time limits of the review period by telephone. At the end of the period, if no non-concurrences have been received from an Assistant Administrator or the General Counsel, concurrence will be assumed. ORIO will notify the RA and forward the package to OPM/MOD for transmittal to the FEDERAL REGISTER.

7.2 Public Advertisement

Because of the obvious importance of most special action issues, the Regional Office should normally summarize the information included in the proposal and make this information available as a news release to newspapers of general circulation after concurrence by headquarters staff offices.

7.3 Handling Public Comments

Public comments will be received by the Regional Office and acknowledged. A summary of these comments will be included and discussed in the preamble of the final rulemaking package. If no comments were received, it must be so noted. The RO will forward one copy of all public comments to the Public Information Reference Unit. The Regional Office will supply copies of these public comments to headquarters offices only upon request.

7.4 Final Rulemaking Action

The final rulemaking (promulgation) for special action SIP revisions will be forwarded by the Regional Administrator to the Administrator via the Office of Regional and Intergovernmental Operations. As shown in Figure 2 (Section 3) the package shall consist of the action memorandum (original and 1 copy), the preamble and regulatory portions (original and 4 copies), and attachments (1 copy). Copies of this submittal will be simultaneously forwarded by the RO to the appropriate staff offices for review. ORIO will again hold the package for 14 calendar days from receipt. During this time ORIO will notify the appropriate staff offices of the time limits of the review period by telephone. At the end of that time, if no nonconcurrences have been received from an Assistant Administrator or the General Counsel, ORIO will notify the R.A. and forward the package through MOD to the Administrator for signature.

The headquarters staff review will be restricted to national policy implications. There will be no provisions for a staff office to recommend changes to the formal proposal or promulgation package unless the changes are of sufficient importance to warrant a formal, written, non-concurrence by the appropriate Assistant Administrator or the General Counsel.

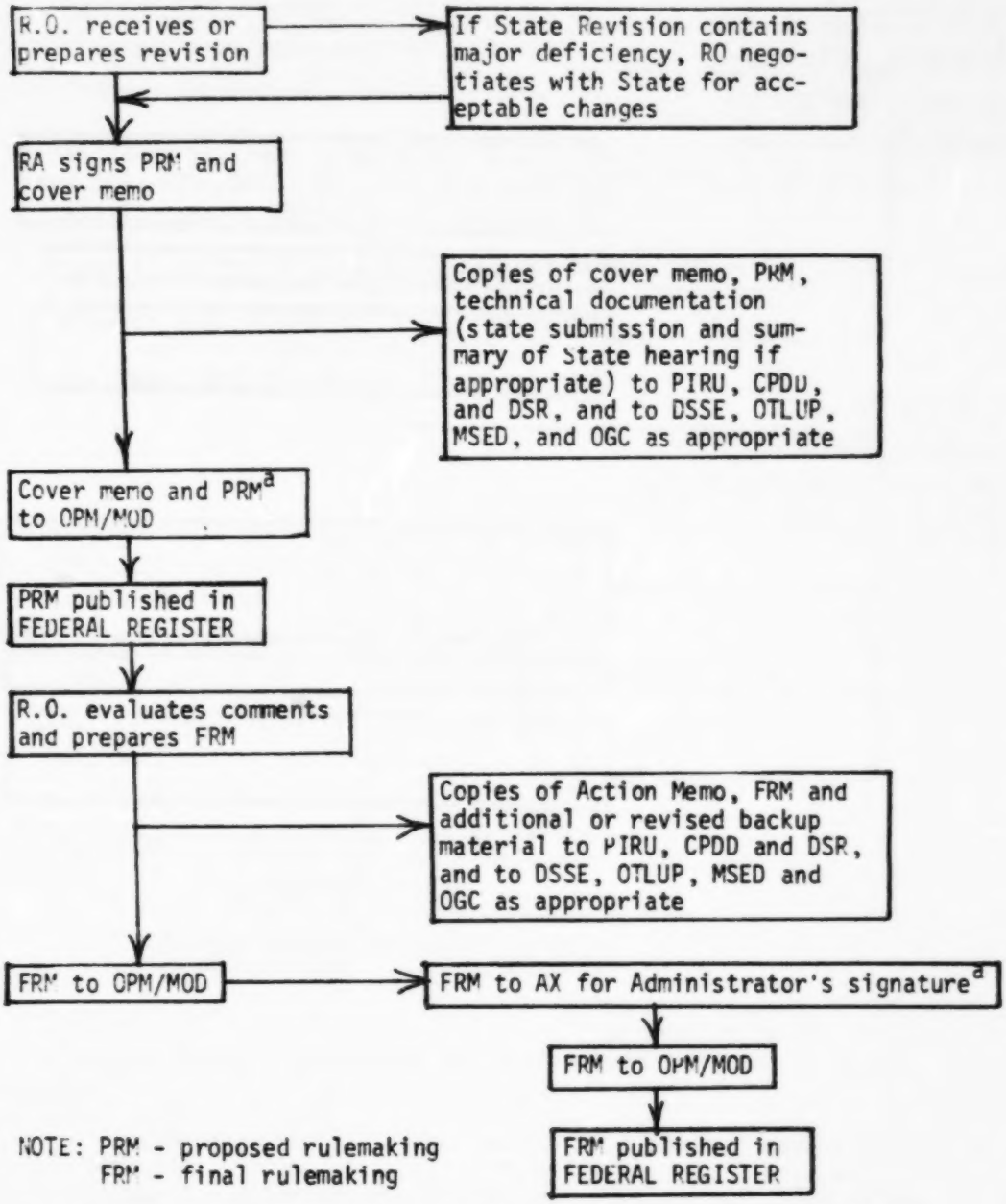
This procedure shall be followed with one exception. For 40 CFR 55 - Energy Related Authority actions, the "hold" period will be 5 days instead of the standard 14. Also, to insure that adequate time is given each party for concurrences the 40 CFR 55 packages should be mailed to ORIO the following work day after such packages have been mailed to the various headquarters review groups, rather than simultaneously with the mailing to these groups.

7.5 Non-Concurrence

If a non-concurrence is warranted at the proposal or final rule-making stage, the Assistant Administrator or General Counsel will forward it to the Regional Administrator with a copy to ORIO. ORIO will provide appropriate staff offices with copies of the non-concurrence. The Regional Administrator will initiate actions as appropriate to resolve the issue. Upon resolution, ORIO will inform the other appropriate offices. If the non-concurrence is resolved by revising the original FEDERAL REGISTER package, the revised package will be resubmitted through the concurrence procedure.

If an agreement cannot be reached, the Regional Office will prepare the package with the non-concurrence memorandum tabbed and transmit the package to the Administrator through ORIO, with copies to appropriate review offices.

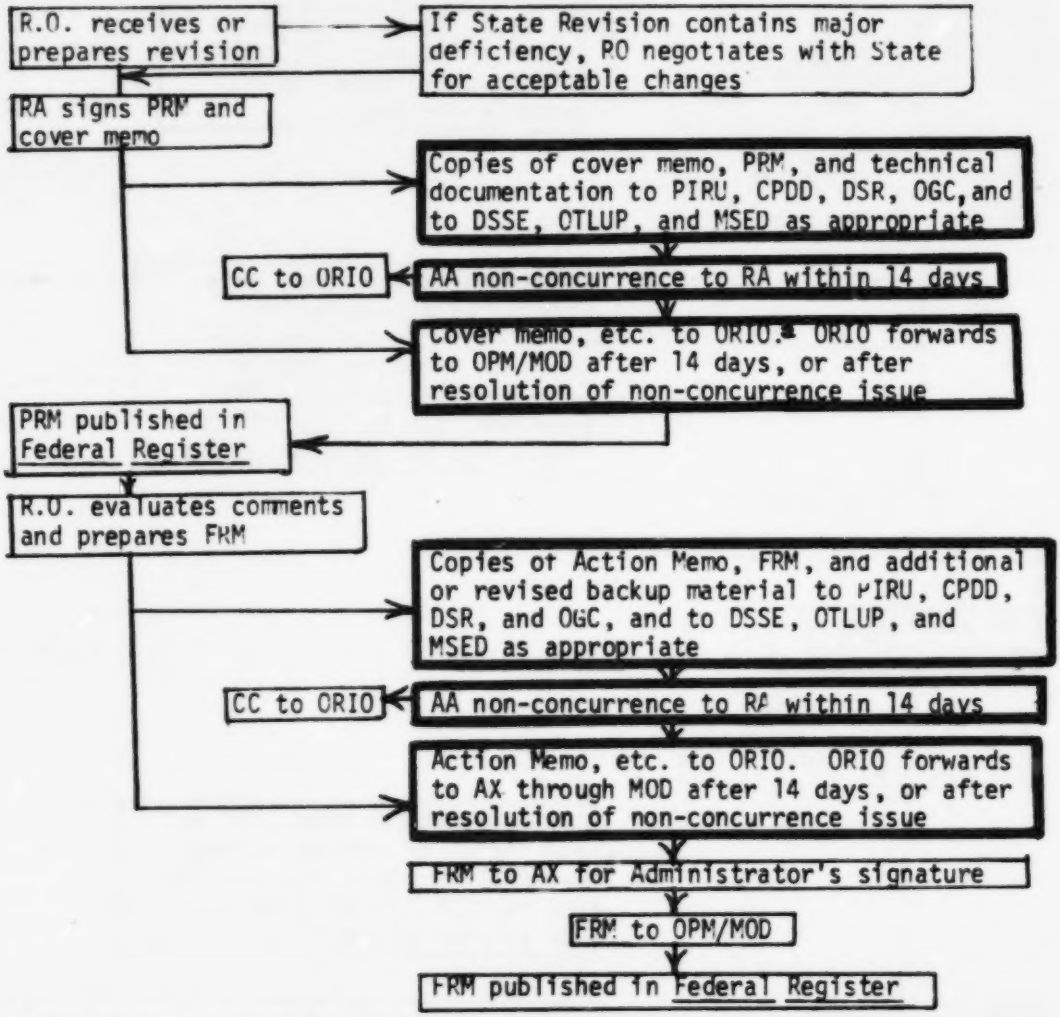
Figure 3. PROCEDURES FOR NORMAL SIP REVISIONS


R.O. receives or prepares revision
If State Revision contains major deficiency, RO negotiates with State for acceptable changes
RA signs PRM and cover memo
Copies of cover memo, PRM, technical documentation (state submission and summary of State hearing if appropriate) to PIRU, CPDD, and DSR, and to DSSE, OTLUP, MSED, and OGC as appropriate
Cover memo and PRM[a] to OPM/MOD
PRM published in FEDERAL REGISTER
R.O. evaluates comments and prepares FRM
Copies of Action Memo, FRM and additional or revised backup material to PIRU, CPDD and DSR, and to DSSE, OTLUP, MSED and OGC as appropriate
FRM to OPM/MOD
FRM to AX for Administrator's signature[a]
FRM to OPM/MOD
FRM published in FEDERAL REGISTER

NOTE: PRM - proposed rulemaking
FRM - final rulemaking

a. This package includes a cover memorandum, action memorandum, original and 1 copy; preamble and regulatory portion, original and 4 copies for the PRM; for the FRM, add the rationale - 1 copy.

Figure 4. PROCEDURES FOR SPECIAL ACTION SIP REVISIONS


R.O. receives or prepares revision
If State Revision contains major deficiency, RO negotiates with State for acceptable changes
RA signs PRM and cover memo
Copies of cover memo, PRM, and technical documentation to PIRU, CPDD, DSR, OGC, and to DSSE, OTLUP, and MSED as appropriate
CC to ORIO
AA non-concurrence to RA within 14 days
Cover memo, etc. to ORIO.a ORIO forwards to OPM/MOD after 14 days, or after resolution of non-concurrence issue
PRM published in Federal Register
R.O. evaluates comments and prepares FRM
Copies of Action Memo, FRM, and additional or revised backup material to PIRU, CPDD, DSR, and OGC, and to DSSE, OTLUP, and MSED as appropriate
CC to ORIO
AA non-concurrence to RA within 14 days
Action Memo, etc. to ORIO. ORIO forwards to AX through MOD after 14 days, or after resolution of non-concurrence issue
FRM to AX for Administrator's signature
FRM to OPM/MOD
FRM published in Federal Register

NOTE: PRM - proposed rulemaking
FRM - final rulemaking
Boxes in heavy outline contain the headquarters staff review

a. This package includes a cover memorandum, action memorandum, original and 1 copy; preamble and regulatory portion, original and 4 copies for the PRM; for the FRM add rationale - 1 copy. For 40 CFR 55 - Energy Related Authority actions, the concurrence period is 5 days.

Revised 9/76